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VIA HAND DELIVERY

April 25, 1997

Ms. Regina Keeney  
Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Ms. Keeney:

Southwestern Bell Telephone Company ("SWBT") respectfully requests clarification of two issues concerning interconnection between LECs and paging providers. This letter is submitted in accordance with the suggestions of the Common Carrier Bureau ("Bureau").<sup>1</sup>

First, several pagers have taken the position that the Commission's interconnection rules prevent LECs from collecting any charges from paging providers. They contend that sections 51.703(b) and 51.709(b) of the Commission's regulations bar LECs from imposing charges for, respectively: (i) carrying paging traffic, and (ii) providing the facilities dedicated to transporting that traffic to paging providers' networks. This interpretation, however, would force LECs to bear much of the cost of paging providers' services with no possibility of compensation. It would therefore amount to an unlawful free provisioning of services to paging providers at LEC rate-payers'

<sup>1</sup>SWBT met with the Bureau on April 1, 1997. SWBT reported it had lost nearly \$500,000 from pagers withholding payments and was continuing to lose \$125,000 more each month. The Bureau suggested that SWBT attempt to resolve the dispute privately and, if that failed, to seek clarification from the Bureau by letter. SWBT has continued to discuss the dispute with several parties but to date the dispute has not been resolved. Thus, SWBT hereby submits this letter. The Bureau suggested that placing disputed amounts into escrow may be a fair approach until the dispute is resolved. SWBT followed this advice and has proposed to pagers that SWBT will continue to provision facilities--even at the losses mentioned above--if pagers agree to escrow. Thus far, no pagers have agreed even to this interim compromise.

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expense. SWBT cannot believe that the Commission intended such an inequitable result.<sup>2</sup>

The Bureau recently stated its view that Section 51.703(b) does indeed prohibit a LEC from imposing a charge based on paging traffic originating on its network.<sup>3</sup> Because traditional paging traffic is one-way, paging providers do not terminate traffic on LEC networks. Thus, today there is no reciprocity of compensation for traffic exchanged between LECs and paging providers.

If charges for the facilities used to transmit paging traffic from a LEC's network to a paging provider's premises are also foreclosed under section 51.709(b), then the Commission's rules would close off both routes--traffic sensitive origination charges and flat rate facilities charges--through which LECs can conceivably recover costs associated with the transport of paging calls. Thus, despite the costs incurred by LECs for transporting such calls, the Commission's rules (as construed by paging providers) will provide no basis for LECs to recover these costs. SWBT requests clarification of whether the Commission actually intended this inequitable result and, if not, how the Commission believes LECs should recover costs of interconnecting with paging providers. Alternatively, SWBT petitions for a change in the rules to allow LECs to recover reasonable costs from paging providers.

Second, even if section 51.709(b) as currently written does prohibit LECs from charging paging providers for transport

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<sup>2</sup>Some paging providers allege that LECs recover the costs of providing paging traffic and facilities through basic charges to local exchange customers. This contention is meritless. Paging providers are cost causative: absent their service, the cost of carrying traffic over LEC facilities to a pager's premises does not exist. While local exchange customers may compensate LECs for some costs, they in no way cover all of the costs for providing one-way traffic and facilities to paging providers. By analogy, for a regular local phone call a LEC receives payment from both the calling party and the called party. Both customers help to cover the costs of transport over their respective loops. Paging providers, on the other hand, want the calling party alone to bear the full cost of transport not only over his loop but also over the pager's dedicated facility all the way to the paging provider's premises--all with no contribution from the paging provider. This is, simply put, a free ride.

<sup>3</sup>Letter from Regina Keeney to Cathleen A. Massey, Kathleen Q. Abernathy, Mark Stachiw, and Judith St. Leger-Roty, March 3, 1997.

facilities, SWBT asks the Bureau to clarify that such facilities charges are permissible so long as section 51.709(b) is subject to the stay entered by the United States Court of Appeals for the Eighth Circuit. Several paging providers have taken the position that the stay is irrelevant to this issue because section 51.709(b) is rendered superfluous by section 51.703(b). Thus, in their letter of January 30, 1997 to the Bureau, AT&T Wireless Services, Inc., AirTouch Communications, Inc., and AirTouch Paging contend that the Eighth Circuit's stay of section 51.709(b) does not enable LECs to charge pagers for transmission facilities used to route paging traffic because such charges are barred by section 51.703(b).<sup>4</sup> This contention is seriously flawed. The necessary implication of the argument is that section 51.709(b) does nothing different from what section 51.703(b) does--i.e., that it has no meaning. Clearly if section 51.709(b) is in the rules it does have meaning and, being separate and distinct from 51.703(b), such meaning is different from 51.703(b).

The Bureau's response to the above-referenced letter did not address the scope of section 51.709(b) and therefore leaves open the question of what charges are allowed while that rule is stayed. SWBT is of the view that, as the paging providers concede,<sup>5</sup> section 51.709(b) addresses the rates for dedicated transmission facilities between two carriers' networks. Section 51.703(b), in contrast, only prohibits LECs from charging CMRS providers for the LEC-originated traffic itself.

The Commission has expressly distinguished charges for traffic from charges for transmission facilities. Compare First Report and Order ¶ 1057 ("additional cost" measure for termination of traffic) with ¶ 1063 ("flat rates" for use of dedicated facilities for the transport of traffic). The Commission's regulations track this distinction. Section 51.703(b) addresses only "charges...for local telecommunications traffic" (emphasis added). The Commission adopted section 51.709(b), an entirely different rule, to address the "rate of...transmission facilities dedicated to the transmission of traffic between two carriers' networks" (emphasis added). There would have been no need for the Commission to adopt section 51.709(b) if charges for facilities was already addressed in section 51.703(b).

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<sup>4</sup>Letter from Cathleen A. Massey, Kathleen Q. Abernathy, Mark Stachiw, and Judith St. Leger-Roty to Regina M. Keeney, January 30, 1997, at 2.

<sup>5</sup>Letter, supra note 4, at 2 n.5.

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Accordingly, SWBT seeks expeditious guidance from the Bureau of where in the Commission's rules LECs are permitted to recover costs associated with paging interconnection or, alternatively, whether a change in the rules needs to be made to allow LECs to recover such reasonable costs. At a minimum, SWBT seeks expeditious clarification that during the stay of section 51.709(b) LECs may impose flat-rate charges in accordance with their lawfully-effective state tariffs for LEC-provided transmission facilities used for the transmission of paging calls.<sup>6</sup>

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By

Paul E. Dorin  
Paul E. Dorin

cc: Mr. William F. Caton,  
Acting Secretary  
Mr. Boasberg  
Mr. Coltharp  
Mr. Casserly  
Mr. Gonzalez  
Ms. M.B. Richards  
Mr. Atlas  
  
Ms. Massey  
Ms. Abernathy  
Mr. Stachiw  
Ms. St. Ledger-Roty

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<sup>6</sup>SWBT notes that it has effective tariffs in each of the five states in its territory providing for the payment by paging providers for such SWBT-provided facilities.